

THE HON'BLE SRI JUSTICE C.V. RAMULU

Wednesday, 1st day of November, 2006

W.P.Nos.19556 of 2000 and 20128 of 2003

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W.P.No.19556 of 2000

Between:

J.S. Rama Murthy

... Petitioner

and

The A.P. Cooperative Tribunal
at Hyderabad rep. by its
rep. by its Secretary and others

... Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.Nos.19556 of 2000 and 20128 of 2003

COMMON ORDER:

These two Writ Petitions are interconnected; therefore, they are being disposed of by this common Order.

These cases have got chequered history. According to the petitioner, he was admitted as a member of the respondent-Jubilee Hills Cooperative House Building Society Limited, with Membership No.3586/75-76. On 3-4-1978, he notified his change of address to the society. On 16-4-1990, the respondent-society returned Rs.7,000/- paid by him stating that no advance money need be paid and the amount would be received only after allotment. The Society failed to include his name in the subsequent lots drawn for the purpose of allotting plots. Therefore, he raised a dispute under Section 61 of the Andhra Pradesh Cooperative Societies Act,1964 (for short 'the Act') being A.R.C.No.10 of 1992, which was allowed by the Cooperative Sub-Registrar/Arbitrator, on 1-12-1992 holding as under:

“Having regard to the facts mentioned above and on considering totality of the circumstances of the case, the respondent society (i.e.) Jubilee Hills Co.op. House Building Society Ltd., TA No.173, Hyderabad is hereby directed to allot and register a suitable vacant plot to the petitioner.”

Challenging the said Order, C.T.A.No.462 of 1994 was filed by the Society and the same was dismissed by an Order dated 27-7-1996 by the Cooperative Tribunal at Hyderabad observing as under:

“However, during the course of arguments, the learned counsel for the appellant/society has informed that there was no

possible (sic. possibility) for the society to comply with the award. Even the counsel for the respondent No.1 admitted that no vacant plots are now available. Such being the position, the society shall comply with the Award on seniority basis of similar type of cases, subject to the availability of vacant plots.”

Thus, the Award passed on 1-12-1992 in A.R.C.No.10 of 1992 attained finality. Therefore, the petitioner requested the society on 1-4-1996 and 8-6-1996 to implement the award by allotting the plot. When the award was not implemented, he filed Writ Petition No.21972 of 1999 for implementation of the award in A.R.C.No.10 of 1992, dated 1-12-1992 as confirmed in C.T.A.No.462 of 1994, dated 27-7-1996 as per bye-law No.42(h). However, the same was dismissed on 30-10-1999 holding as under:

“The petitioner approached this Court seeking execution of the Order. It is fairly conceded by the learned counsel for the petitioner that under Section 70-A of the Act an award passed by the Arbitrator under Section 61 of the Act can be executed by the civil Court. Observing that the petitioner is at liberty to avail the relevant provisions for executing the award, this Writ Petition is dismissed at the admission stage.”

Aggrieved by the same, he filed an appeal in W.A.No.131 of 2000, which was dismissed on 10-2-2000 observing as under:

“There is no order passed by respondent No.4 and there is no material on record from which it can be inferred that respondent No.4 is either violating or not following its bye-laws in letter and spirit. In the absence of such material, no vague mandamus can be issued against the respondent Nos.1 to 3 directing them to see that respondent No.4 follows its bye-laws in letter and spirit. If the appellant raises any dispute before the appropriate forum and if any adverse order is passed against him, he is at liberty to challenge the same in accordance with law.”

Having not satisfied, petitioner further filed another A.R.C. under Section 61(1)(b) of the Act read with Rule 49 of the A.P. Cooperative Societies Rules seeking the following reliefs:

“ (i) declare the inaction of the said society in not allotting a plot to the petitioner in terms of the award dt. 1.12.92 in ARC No.10/92 and the Judgment dt. 27.7.96 in CTA No.464/94 as arbitrary, *mala fide* and discriminatory;

(ii) consequently direct the respondent-society herein to see that the bye-law provision of 42(h) of the bylaws of the Jubilee Hills Cooperative House Building Society Ltd., TB No.173 Hyderabad, in letter and spirit so that such of the vacant plots falling under the said by law could be resumed and one such plot allotted to the petitioner at the market rate per yard that was prevalent during the year 1988.

However, the said ARC was returned by the Arbitrator on 4-4-2000 with an endorsement ‘CTA is an appellate authority. Against CTA orders, the authority having original jurisdiction, a lower Court, cannot entertain further arbitration. Hence, not admitted. Returned original papers’. Aggrieved by the same, the petitioner carried the matter in appeal being C.T.A.(SR) No.2490 of 2000 before the Cooperative Tribunal. The Tribunal rejected the same on 26-6-2000 as not maintainable observing as under:

“2. Now it is has been contended by the learned counsel for the appellant that this is a fresh dispute and against the same appeal lies to the Cooperative Tribunal U/s.76(1) of APCS Act. I am not in acceptance with the contention of the learned counsel. The matter has been adjudicated finally and a direction was given to the society to allot the house site to the appellant, when once it became final, the remedy is only by way of execution, but not by filing an appeal. He has to take steps U/s.70-A of the Act for execution of the award. The Order in the Writ Petition shows that the counsel for the appellant has fairly conceded before the Hon’ble High Court that the Award passed U/s 61 of the APCS Act by an Arbitrator can be executed U/s.70-A by the Civil Court.”

He further filed a review on 30-7-2000, but the same was also returned stating ‘how the review petition is maintainable U/s.78 of the APCS Act against the Order of the rejection of appeal as not maintainable’. Against the said Orders, he filed the present Writ Petition No.19556 of 2000. Thereafter, he made representations on 1-7-2003 and 16-7-

2003 to the Registrar complaining that allotments are made to others overlooking his seniority and the Award made in his favour.

Further, the petitioner filed Writ Petition No.20128 of 2003 seeking a Mandamus to declare the action of the respondent-Society in not allotting and registering a plot since 1988 as illegal and consequently to declare that he is entitled for allotment and registration of a suitable plot by virtue of seniority and pursuant to the Award dated 1-12-1992 in A.R.C.No.10 of 1992, which was confirmed in C.T.A.No.462 of 1994, dated 27-7-1996. While admitting the said Writ Petition, an interim order was passed on 25-9-2003 directing the 2nd respondent not to transfer or register any plot in favour of any person till the award dated 10-12-1992 in favour of the petitioner is complied with in W.P.M.P.No.25222 of 2003. However, the 3rd respondent got impleaded complaining that registration of plot No.365 in her favour could not be done on account of the stay granted by this Court. Thereafter, Writ Petition No.20128 of 2003 was dismissed on 29-12-2004 on the ground that it is hit by the principles of *res judicata*. Aggrieved by the same, the petitioner filed W.A.No.119 of 2005. On 7-2-2005, a Division Bench of this Court directed the 2nd respondent-society to place on record the complete list of vacant plots, which have not been so far allotted or possession of which have not so far been delivered to any of the Members and a list of inter se seniority of members with complete details of pending litigation in various Courts. On 24-3-2005, the society filed an affidavit with Annexures I-A, I-B, II, II-A and III pertaining to the list of plots not allotted but under legal occupation, list of plots allotted but pending in the litigation and list of awards as per seniority and awaiting the allotments, and cases relating to allotment. But, no details as to the plots not delivered as directed by this Court were furnished. On 13-6-2005, the petitioner

herein got impleaded in C.T.A.No.39 of 2001 filed by the respondent-society against the Award directing allotment of plot No.400 in favour of one Dr. M.S. Raju and the said appeal was disposed of after hearing the society, Dr.M.S.Raju and M.Ramalingeswara Rao, who also got impleaded. The Tribunal also appears to have held that the petitioner is a seniormost eligible member for allotment in preference to all others and the said order became final, as none of the parties to the said Order questioned the same.

One A. Jitendranath filed an appeal before the Supreme Court and obtained interim order on 10-8-2005. On knowing about the said orders, Dr.M.S.Raju, Ramalingeswara Rao and the petitioner filed impleadment petitions before the Apex Court and sought to set aside the interim order. The Supreme Court held that the award in favour of Jitendranath was a nullity and a direction has been given to the Tribunal as regards the allotment of plot No.400 and that the inter se dispute would be decided by an appropriate forum and further directed to initiate enquiry for the wrong representation made by the Society before them. Therefore, the petitioner filed W.P.M.P.No.16096 of 2006 seeking impleadment of Dr.M.S.Raju, B.M.Ramalingewara Rao, P.Badri Premnath and Jithendranath, who have been claiming rights in respect of plot No.400, in this Writ Petition, for the purpose of complete and effective adjudication of the matter before this Court.

Further, according to the petitioner, on 14-1-2006 Newspapers reported that the Vigilance Commissioner has submitted a report to the Government identifying illegal allotment of 169 plots, but the society sent Minutes of the General Body Meeting on 26-3-2006 and 2-4-2006 stating that as per the directions of the Registrar under section 4(2) of the Act, the Managing Committee proposed and the General Body resolved to treat those allottees also as members on par with others,

virtually refusing to invoke bye-law No.42(h). Further, W.A.No.119 of 2005 was allowed on 14-4-2006 setting aside the Order of the learned single Judge and remanding the matter for fresh consideration and also directing Writ Petition No.20128 of 2003 and Writ Petition No.19556 of 2000 to be disposed of together observing as under.

“For the reasons stated above, the appeal is allowed. The order of the learned single Judge is set aside with the direction that Writ Petition No.20128 of 2003 be listed for fresh adjudication before the single Bench. In order to obviate the possibility of inconsistent orders being passed by different benches, we direct that Writ Petition No.20128 of 2003 be listed for hearing along with Writ Petition No.19556 of 2000.

While disposing of the appeal in the manner indicated above and directing listing of Writ Petition No.20128 of 2003 with Writ Petition No.19556 of 2000, we deem it proper to make it clear that we have deliberately refrained from pronouncing on the merits of the claim made by the appellant and it will be open for the single Bench to consider and decide the entitlement, if any, of the appellant to be allotted a plot. It will also be open to the learned single Judge to first adjudicate on the legality of orders dated 4.4.2000 and 26.6.2000 passed by the authorities constituted under the Act and then decide whether it was a fit case for exercise of jurisdiction under Article 226 of the Constitution of India for issuance of a mandamus for allotment of plot to the appellant.....”

In view of the subsequent events and directions of the Division Bench and of the Supreme Court, the question of *inter se* seniority and executability of the Orders obtained by rival claimants in respect of Plot No.400 needs to be resolved by this Court.

According to the petitioner, he is the seniormost member of the respondent-society and eligible for allotment of plot in preference to any other member. The findings of the Tribunal, in this regard, became final and binding on the rival claimants to plot No.400, Phase III, Road No.81 Jubilee Hills, which is available for allotment. The respondent-society is taking undue advantage of the Awards and Orders obtained by rival claimants from various fora and refusing to allot plot in his

favour, since more than a decade; whereas, A. Jitendranath, B.M. Ramalingeswara Rao and Dr. M.S.Raju are parties to the Orders passed by the Tribunal. P.Badri Premnath obtained order from the civil Court, which has got no jurisdiction and is a nullity. Further, though the respondent-society is a party before all the Courts and Tribunals, in all cases filed by the rival claimants, the society failed to place the true facts and material documents before the respective fora and is responsible for the present situation and complicating the matter. However, all the Tribunals and Courts are subordinate to the High Court in view of Articles 226 and 227 of the Constitution of India; therefore, executability of these conflicting orders by different Courts can be resolved only by this Court. Further, the action of the respondent-Registrar in refusing to entertain petitioner's application for a direction to the society to invoke bye-law No.42(h) and the consequential resolution of the society not to invoke bye-law No.42(h), as stated above, are liable to be declared as illegal and thus sought for the relief by way of amendment of the prayer as under:

“to substitute clause (i) and (ii) of the prayer as follows:

- (i) to declare the action of the first and second respondent in refusing to implement bye-law No.42(h) as illegal and contrary to law and accordingly, issue a Writ of Mandamus directing the respondents to initiate immediate steps as per Bye-law No.42(h) in respect of the plots, which were kept vacant in spite of allotment.
- (ii) to further declare the petitioner as the senior most member of the society eligible for allotment of plot No.400 of Phase-III, Road No.81, lying unallotted and accordingly, direct the respondents 1 and 2 to allot and execute registered sale deed in respect of plot No.400, Phase III, Road No.81, Jubilee Hills to the petitioner”.

Respondent No.2 filed a detailed counter affidavit in Writ Petition No.20128 of 2003 denying the allegations made by the petitioner. It is asserted *inter alia* that it is true that by an Award in A.R.C.No.10 of

1992, dated 1-12-1992 the Arbitrator issued a direction to allot suitable vacant plot to the petitioner. Questioning the said award, the society filed an appeal in C.T.A.No.462 of 1994. The Cooperative Tribunal, by its Award dated 27-7-1996, while recording the admission of the counsel for the writ petitioner that no vacant plots are available and there is no possibility of the society to comply with the Award, directed the Society to comply with the Award of the Arbitrator on seniority basis of similar type of cases, subject to availability of vacant plots. Further, when the petitioner filed Writ Petition No.21972 of 1999, it was dismissed on 13-10-1999 observing that the petitioner may avail the remedies as available under law for executing the Award. Petitioner further carried the matter in W.A.No.131 of 2000, which was dismissed on 10-2-2000. Thereafter, the petitioner once again raised a dispute under Section 61 of the Act before the 1st respondent, which was rejected on 4-4-2000. Questioning the same, petitioner filed C.T.A. before the Cooperative Tribunal and ultimately, the Tribunal, by an Order dated 26-6-2000 rejected the same. Questioning the said rejection Order, petitioner filed Writ Petition No.19556 of 2000. Writ Petition No.20128 of 2003 is also filed substantially on the very same allegations, seeking for allotment of plot in terms of the Order in C.T.A. No.462 of 1994. The said Order of the Appellate Tribunal in the C.T.A. was culminated in W.A.No.131 of 2000. It is further stated that since there are number of members awaiting allotment, the Society decided to conduct drawal of lots in the presence of prominent members for allotment of plots. The members, who are eligible by paying demanded tentatively estimated development charges in time, were included in the draws. The members, who fail to pay the above amounts, were not included in the draw. Since the petitioner did not pay the demanded amount in time, he cannot complain that he is the

seniormost member and was not allotted any plot by the society. Further, there are also cases, where awards were made by the Arbitrators directing the society to allot plots and the said awards are anterior in point of time to that of petitioner's award. There are also cases, where against the order of allotment of plot by the Tribunal, the society filed appeals, which are pending. Since there are awards anterior in time to that of petitioner's award, the society can only consider the claim of the petitioner after considering the claims of other members, who are seniors to the petitioner and who obtained awards from the Arbitrator against the society, subject to availability of plots. Respondent No.2 filed along with the counter, Annexure-I showing the list of ARCs, which were pending and disposed of, Annexure II litigation of A.P. Chamber of Commerce and Annexure III, litigation of Santh Nirankari Mandal.

Learned counsel appearing for the respondent-society has relied upon the decision of the Supreme Court in **ZOROASTRIAN COOP. HOUSING SOCIETY LTD. v. DISTRICT REGISTRAR, COOP.SOCIETIES (URBAN)**^[1] wherein it was held that normally the bye-laws of a society do not have the status or force of a statute and compared with the articles of association of a company, the approved bye-laws of a society are not necessarily valid. They could still be against terms of Act or Rules concerned and an enquiry in that regard might be necessitated. He further drawn attention of the Court to another decision of the Apex Court in **KASTHA NIWARAK GRAHNIRMAN SAHAKARI SANSTHA MARYADIT v. PRESIDENT, INDORE DEVELOPMENT AUTHORITY**^[2] wherein it was held that the allotment to non-eligible societies, even if accepted to be true, does not confer any right on the party. Two wrongs do not make a

right. A party cannot claim that since something wrong has been done in another case, direction should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matters, no discrimination is involved. The concept of equal treatment on the logic of Article 14 of the Constitution cannot be pressed into service in such cases. He has also drawn attention of the Court to yet another decision of the Apex Court in **STATE OF KARNATAKA v. ALL INDIA MANUFACTURERS ORGANIZATION**^[3] in which it was held that to attract the doctrine of '*res judicata*' the matters must be 'directly and substantially in issue' in previous proceeding. If in the previous proceeding, the party exhausted all possible issues, it would be an abuse of process of court to re-examine the issues that had been raised or ought to have been raised in the earlier proceeding.

Learned counsel appearing for other respondents have strenuously contended that the petitioner cannot be treated as a senior member. The seniority of a member always fluctuates for the purpose of inclusion of his or her name in the drawal of lots. The names of those persons, who have paid the developmental charges etc., are alone included and not others. Before every drawal of lots, a seniority list is drawn on the basis of charges paid by each member and then only the lots are drawn. Therefore, the contention of learned counsel for the petitioner that the petitioner is the seniormost member than all others and the said aspect has already been concluded in C.T.A.No.39 of 2001 is all false and untenable. Since there are so many Awards obtained by different members, the society must be permitted to implement them one after the other as per the seniority of membership in the society. Even in the Award obtained by the petitioner, which attained finality in C.T.A.No.462 of 1994, there is no

positive direction. There is only a direction to allot a plot in favour of the petitioner along with others. The Writ Petitions are devoid of merits and are liable to be dismissed.

Conclusions:-

W.P.No.19556 of 2000

Though a difference is sought to be made between the subject matters of A.R.C.No.10 of 1992 and ARC Dis.Rc.No.13740/2000/Hsg-I, which culminated in CTA (SR) No.2490 of 2000, but the substance in both the ARCs is one and the same. Therefore, as submitted by the learned counsel for the respondent-society, it is not open for the petitioner to raise the same substantial dispute again and again before the same forum. In fact, this amounts to abuse of process of law, as rightly pointed by the learned counsel for the respondent-society by relying upon the Judgment of the Apex Court in **STATE OF KARNATAKA's** case (3 supra). The petitioner could have got the Award passed in his favour in A.R.C. No.10 of 1992 implemented as per the directions of this Court in Writ Appeal No.131 of 2000, dated 10-2-2000. Instead of that, he raised another dispute under Section 61 of the Act, which was rightly rejected by the Arbitrator and confirmed by the Appellate Tribunal. The Tribunal has rightly held that the matter has been adjudicated finally and a direction was given to the society to allot a plot to the petitioner and when once it became final, the remedy is only by way of execution, but not by filing ARC. The petitioner could have taken steps under Section 70-A of the Act for execution of the Award. This Court is of the opinion that the Arbitrator as well as the Appellate Tribunal rightly rejected ARC (SR) and & CTA (SR) as not maintainable. Therefore, Writ Petition No.19556 of 2000 is devoid of merits and is liable to be dismissed.

W.P.No.20128 of 2003

In this backdrop, it has to be examined as to whether there is any Award obtained by the petitioner, which requires to be implemented by way of a direction under Article 226 of the Constitution of India and whether the seniority of the petitioner has already been decided in the earlier proceeding and, therefore, he is senior to all the unofficial respondents and as such, preferential treatment must be given to him.

In fact, while disposing of Civil Appeal Nos.306-307 of 2005 by an Order dated 2-5-2006 to which the petitioner was also a party, the Supreme Court held as under:

“.....The correctness or otherwise of the contentions raised by the impleaded parties, thus, need not be gone into. We must, however, place on record that our attention has been drawn to the fact that several proceedings as regard allotment of plot at the hands of the society are pending adjudication before several forums. Even a direction has been issued by a Cooperative Tribunal as regard allotment of plot No.400. It goes without saying that the courts of law would always see to it that while making allotment of plot by a cooperative society, no discrimination is caused amongst the members. The Cooperative Society having been formed for the purpose of allotment of plots to its members must strictly and scrupulously follow the statutory rules as also the bye-laws framed by it. It must also act within the four corners not only of the statute and statutory rules, but also the bye-laws framed by it. In terms of extant law, seniority rule would govern the matter of allotment of land amongst the members of the society. This Court is not in a position to determine the inter se dispute, if any, even as regard the seniority amongst the members. In fact, this Court has not been called upon to do so nor in view of the lis between the parties, we can go thereinto.”

Before the Supreme Court, the only question was as to allotment of plot No.400. However, as seen from above, the question of *inter se* seniority between the parties has been left for being worked out before appropriate forum. Further, as seen from the Award in C.T.A.No.39 of 2001, it is clear that the seniority between the parties was not decided, but only a passing observation was made by the Tribunal and it is not declared in favour of the petitioner to hold that he is a seniormost

member of the society. In fact, in view of the pendency of various litigation in various fora and the fluctuation of seniority from time to time in view of payment of developmental charges, it is difficult to hold in a Writ Petition under Article 226 of the Constitution that either the petitioner or unofficial respondents are the seniors or decide the *inter se* seniority of the parties. If the petitioner is serious enough to get the *inter se* seniority decided between himself and other members, probably as suggested by the Apex Court, he has to work out his remedies as available under the law. It cannot be decided on the basis of observations made here and there with reference to the litigation between the same parties. It requires a regular enquiry by leading evidence, both oral and documentary and as to the factual position of seniority as required for being included in the drawal of lots, at that particular point of time, on the basis of developmental charges paid by each member. This Court cannot venture to go into the complicated questions of fact and decide the matter here. This Court also cannot go into the question of fact and direct the society by way of issuance of a Writ of Mandamus to do its statutory obligation as required under the law. May be, Bye-law No.42(h) requires allotment of plots as per seniority, but no direction can be given by this Court under Article 226 of the Constitution of India, since it is not a statutory provision, which obligates the society to do so. The society is at liberty to look into the seniority and then proceed with the matter.

Another argument was advanced by the learned counsel for the petitioner that the Registrar of Cooperative Societies is bound under Section 4(2) read with Section 22 of the Act to direct and see that the society follows its bye-laws in its strict sense. The Registrar, in a given case, is bound to act and direct the society to follow bye-law No.42(h) of the bye-laws of the society. It is for the Registrar to decide whether

the society is following its bye-laws properly or not. But, no such case is made out for giving a particular direction under Article 226 of the Constitution of India. Petitioner never approached the Registrar and obtained any orders, either positively or negatively. Therefore, there is no necessity of going into this aspect.

In fact, the petitioner may have to be relegated to the same position as was directed in W.A.No.131 of 2000. But, however, learned counsel for the respondent-society stated that relegating the petitioner to Executing Court may create some problems, since many of the senior members have obtained various Awards from various fora and they have to be implemented together. I am of the considered opinion, to avoid any confusion, it must be left open to the respondent-society to decide the matter as per law, in view of various arbitration proceedings and decrees obtained by different persons from the Civil Court etc.

For the aforementioned reasons, the only direction that can be issued is to direct the 2nd respondent-society to take into consideration the Award passed by the Arbitrator in A.R.C.No.10 of 1992, dated 1-12-1992, which attained finality in C.T.A.No.462 of 1994, dated 27-7-1996 along with other Awards passed in favour of different members of the society, as per their seniority and consider for allotment of a plot including Plot No.400 in favour of the petitioner, if he is otherwise eligible, as per law.

Accordingly, the Writ Petition No.19556 of 2000 is dismissed and Writ Petition No.20128 of 2003 is disposed of. No order as to costs.

01-11-2006

prk

[\[1\]](#) 2005(5) SCC 632

[\[2\]](#) 2006(2) SCC 604

[\[3\]](#) 2006(4) SCC 683